

PR#9833

DERICHSWEILER, MARK

8/8/2008

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, et al.,

4 Plaintiff,

5 vs.

CASE NO. 05-CV-00329-GKF-SAJ

6 TYSON FOODS, INC., et al.,

7 Defendants.
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13 VIDEOTAPED DEPOSITION OF MARK DERICHSWEILER
14 TAKEN ON BEHALF OF THE DEFENDANTS
ON AUGUST 8, 2008, BEGINNING AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA
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24 REPORTED BY: Laura L. Robertson, CSR, RPR
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EXHIBIT

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1 defendants.

2 MS. SOUTHERLAND: Leslie Southerland for
3 Cargill.

4 WHEREUPON

5 MARK DERICHSWEILER,
6 after having been first duly sworn, deposes and says
7 in reply to the questions propounded as follows,
8 to-wit:

9 DIRECT EXAMINATION

10 BY MR. MCDANIEL:

11 Q. Sir, would you state your full name, please.

12 A. Mark Derichsweiler.

13 Q. No middle name?

14 A. No middle name.

15 Q. Okay.

16 A. My parents thought that 13 letter last name
17 was enough.

18 Q. And what is your -- who is your employer and
19 what is your position?

20 A. I work for the Department of Environmental
21 Quality, I'm an engineering manager, supervisor for
22 the watershed planning and stormwater permitting
23 section.

24 Q. All right. You have actually appeared for
25 deposition on two previous occasions where you had

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1 been designated by the state of Oklahoma as a
2 representative authorized to testify on prior topics,
3 and I think in your, the first of those depositions we
4 spent some time going through your work history. Do
5 you recall that testimony?

6 A. Yes.

7 Q. And I don't want to repeat it today, but was
8 there anything about your testimony regarding your
9 work history that was incorrect in the prior
10 deposition?

11 A. No.

12 Q. Okay. And you also provided in that first
13 deposition a document where you summarized the
14 positions you have held during your tenure as an
15 employee of the state of Oklahoma; correct?

16 A. Yes.

17 Q. And is that document still accurate?

18 A. Yes.

19 Q. All right. Now, just for purposes so that
20 we can have a complete record in this deposition,
21 would you please identify any -- your higher education
22 post high school degrees received, institutions and
23 years?

24 A. I received my BS degree in civil engineering
25 from University of Oklahoma in 1976, and a master's

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1 degree in regional and city planning also from the
2 University of Oklahoma in 1981.

3 Q. All right. Do you hold any licenses or
4 certifications?

5 A. I am a Registered Professional Engineer in
6 the state of Oklahoma.

7 Q. And what was the year of your initial
8 registration?

9 A. I believe that was in 1980.

10 Q. Have you been continuously registered since
11 that -- since 1980?

12 A. Yes.

13 Q. And is there a specific classification for
14 your engineering registration?

15 A. There is not. When I became registered, it
16 was just registered engineer, they didn't have areas
17 of specialization or areas of interest, so it was just
18 a general.

19 Q. All right. Now, if you can explain briefly,
20 and I am during the course of this morning,
21 Mr. Derichsweiler, going to try to not ask you to
22 repeat things that we have already gone through,
23 except to the extent that I may need to for a little
24 background.

25 And one of the items of background that I

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1 would like you to explain briefly again is how your
2 job function with the Department of Environmental
3 Quality relates to the activities, conditions or
4 programs of the state that are relevant to the
5 Illinois River Watershed?

6 A. My section is responsible for compiling the
7 results of water quality monitoring and the
8 assessments of those data compared against Water
9 Quality Standards to identify impaired waters, which
10 are included on the 303(d) list, as it is called for
11 the state, which is included in our biannual, every
12 two year report that we send to EPA.

13 We are also responsible for conducting the
14 TMDLs, Total Maximum Daily Load studies for those
15 impaired waters. We also review activities in
16 surrounding states, including Arkansas, so permits and
17 other things that could be within the watershed as
18 well as in the other surrounding states, those reviews
19 are done by myself.

20 Q. All right. Also during the course of the
21 day there's certain lingo or terms that are common in
22 your profession that I think your average citizen may
23 not be familiar with, so I'm going to ask you to
24 identify or explain what some of those mean.

25 So tell us what the 303(d) list is?

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1 question, please.

2 A. Okay.

3 Q. Have you formed any expert opinions on
4 whether the land application of poultry litter in the
5 Illinois River Watershed far exceeds the capacity of
6 the soils and vegetation to absorb the nutrients?

7 A. No.

8 Q. All right. Let me ask you to do the same
9 with paragraph 52, please.

10 A. Okay.

11 Q. Have you formed any expert opinions as to
12 whether the land application of poultry litter in the
13 Illinois River Watershed has led to the runoff and
14 release of large quantities of phosphorous or other
15 alleged hazardous substances, pollutants and
16 contaminants from the fields, where the litter was
17 applied to waters in the Illinois River Watershed?

18 A. Yes.

19 Q. All right. Explain that opinion.

20 A. We have conducted studies with looking at
21 the loading of phosphorous within the watershed,
22 poultry waste and litter disposal has been identified
23 as generating large quantities.

24 Q. Of what?

25 A. Phosphorous.

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1 biota in the Illinois River Watershed have been
2 injured from any source?

3 A. No.

4 Q. Have you formed an expert opinion as to
5 whether or not the lands in the Illinois River
6 Watershed have been injured as a result of the
7 practice of land applying poultry litter?

8 A. No.

9 Q. Do you have an expert opinion as to whether
10 lands in the Illinois River Watershed have been
11 injured as a result of any other source?

12 A. No.

13 Q. Have you formed any expert opinion as to
14 whether or not water in the Illinois River Watershed
15 has been injured as a result of the practice of the
16 land application of poultry litter?

17 A. Yes.

18 Q. All right. State that opinion.

19 A. I believe poultry litter is responsible for
20 the majority of the loading of phosphorous to Lake
21 Tenkiller which has damaged the water in Lake
22 Tenkiller.

23 Q. Is that it?

24 A. Could you restate the question?

25 Q. The question was, I asked you to state

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1 specifically what your -- what opinions you hold with
2 regard to whether or not water in the Illinois River
3 Watershed have been injured as a result of the
4 practice of land applying poultry litter?

5 A. I believe poultry litter is also a
6 contributor to the phosphorous levels and the bacteria
7 levels in the streams, which have also violated the
8 Water Quality Standards.

9 Q. All right. The first part of your answer a
10 moment ago, you said you believed poultry litter was
11 responsible for a majority of the loading to Lake
12 Tenkiller, but I wasn't sure I heard you say the
13 loading of what?

14 A. Phosphorous.

15 Q. All right. Let's start with that.
16 Phosphorous loading to Lake Tenkiller. Describe for
17 me the -- what you're relying on as the basis for that
18 opinion.

19 A. Again, the loading estimates that have been
20 made in the watershed studies that we have conducted
21 with the reports that we have referred to previously
22 from Dynamic Solutions, from Dr. Storm. The report
23 that was done by the Water Resources Board.

24 Q. Identify that report.

25 A. The Clean Lakes study, which was done by

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1 Is that still --

2 A. I think you asked me to explain what I meant
3 by that, and I think I said, we can ask her to read it
4 back, but I think I said that it was more than any
5 other particular source.

6 Q. Okay. So you're saying that of the sources
7 you have evaluated in your opinion litter is the
8 largest?

9 A. Let me revise that from majority to the
10 primary, or the largest contributor.

11 Q. Okay. All right. That's fine. Any time
12 you want to correct, so that's no problem. All right.

13 Then let's be clear, the basis, your basis
14 for saying it is the primary source is again based
15 upon the Clean Lakes study, Dr. Storms' work and
16 Dynamic Solutions' work, anything else?

17 A. Those are the three major sources, yes.

18 Q. All right. Tell me, if you could, provide
19 for me, if you're saying that poultry litter is the
20 primary source, let's list all of the sources that you
21 have evaluated in developing your expert opinion.

22 MR. NANCE: Object to the form.

23 THE WITNESS: Loading from point sources,
24 from forest lands, from urban areas, from crop lands.
25 These are just general categories. There are